

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY	DOC 53
ELECTRONICALLY FILED	
DOC #:	
DATE FILED: 6/22/11	

IN RE WORLD TRADE CENTER DISASTER SITE LITIGATION	:	<u>ORDER APPROVING</u>
IN RE LOWER MANHATTAN DISASTER SITE LITIGATION	:	<u>SETTLEMENT WITH TAYLOR</u>
IN RE COMBINED WORLD TRADE CENTER DISASTER SITE AND LOWER MANHATTAN DISASTER SITE LITIGATION	:	<u>RECYCLING AND DISMISSING</u>
	:	<u>CERTAIN PLAINTIFFS FOR</u>
	:	<u>FAILURE TO PROSECUTE</u>
	:	21 MC 100 (AKH)
	:	21 MC 102
	:	21 MC 103

ALVIN K. HELLERSTEIN, U.S.D.J.:

The Court has been advised that Plaintiffs' Liaison Counsel, Worby Groner Edelman & Napoli Bern, LLP, and counsel for Taylor Recycling, LLP, have reached a settlement of all claims against Taylor Recycling in the above-captioned cases. The Court has received a pair of stipulations to dismiss settled cases. The first stipulation seeks to dismiss the claims of 1,802 Plaintiffs who (i) had claims against Taylor Recycling and (ii) executed proper releases and claims forms to terminate their cases against the City of New York and its contractors under the Settlement Process Agreement, As Amended ("SPA"). The second gives no indication of its intended purpose, but Liaison Counsel has informed the Court that it is a request to have 26 Plaintiffs dismissed involuntarily for failure to prosecute. The 26 Derivative Plaintiffs held claims against Taylor Recycling but never executed proper releases and claims forms to settle under the SPA. I rule as follows.

I. The Settlement with Taylor Recycling is Fair and Reasonable, and the Claims of the 1,802 Plaintiffs who Filed Proper Settlement Paperwork is Endorsed.

Taylor Recycling, Phillips & Jordan, Inc, and Evans Environmental & Geological Science and Management LLC were sued by a subset of September 11 Plaintiffs who claimed that they had incurred injuries because of the work they performed at the Fresh Kills landfill in

Staten Island. Phillips & Jordan, Inc, and Evans Environmental settled all claims against them for \$8.1 million each. The two settlements were part of a negotiation that contemplated an equivalent settlement with the third Defendant, Taylor Recycling, also for \$8.1 million, for a total settlement against the Fresh Kills Defendants of \$24.3 million. This settlement was additive, for this subset of Plaintiffs, to the settlement amounts that the City of New York had agreed to pay under the SPA.

In November 2010, I issued an Order in which I found the settlement of \$24.3 million to be fair and reasonable in the aggregate, and as to each Defendant for its share of \$8.1 million. See Order Affirming Settlement, In re World Trade Center Disaster Site Litig., 21 MC 100 (Doc. No. 2248) (Nov. 15, 2010). I reaffirm that finding and approve this final piece of the overall settlement.

The settlements with each of the Fresh Kills Defendants were to become operative if the SPA itself were ratified by the Plaintiffs eligible to settle. The SPA required each settling Plaintiff to submit proper settlement paperwork, in order to become a part of the settlement. See Order Accepting Report of Special Counsel and Providing for Effectiveness of Settlement, In re World Trade Center Disaster Site Litig., 21 MC 100 (Doc. No. 2669) (S.D.N.Y. Dec. 30, 2010). The 1,802 Plaintiffs who are the subject of the first stipulation at issue completed proper paperwork and joined the settlement. Accordingly, as their settlement with Taylor Recycling is approved, the stipulation dismissing their cases voluntarily under Federal Rule of Civil Procedure 41(a)(ii) is accepted. The stipulation has been “So Ordered” by me and will be docketed by the Clerk.

- II. The Complaints of 26 Derivative Plaintiffs who Alleged Claims Against Taylor Recycling, but who did not File Proper Settlement Paperwork, Are Dismissed Involuntarily for Failure to Prosecute

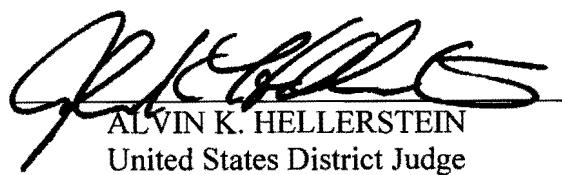
As explained, the settlements with the Fresh Kills Defendants relied on the approval of the SPA by the Plaintiff population. In my Order of December 30, 2010, I observed that some of the Plaintiffs who had expressed an intention to settle under the SPA had not filed proper paperwork to give effect to their individual settlements. These Plaintiffs received a limited period of time to cure the deficiencies in their paperwork, and were advised in the Order that their cases would be dismissed for failure to prosecute if they failed to do so. See Order Accepting Report of Special Counsel and Providing for Effectiveness of Settlement, In re World Trade Center Disaster Site Litig., 21 MC 100 (Doc. No. 2669) (S.D.N.Y. Dec. 30, 2010).

A group of Plaintiffs who had to cure their paperwork held claims against Taylor Recycling. I have been informed that 26 of these Plaintiffs have not cured the defects in their paperwork. Accordingly, I dismiss the complaints of these 26 Plaintiffs for failure to prosecute under Federal Rule of Civil Procedure 41(b). The dismissals are with prejudice. The list of 26 Plaintiffs is attached to this Order.

One final point deserves notice. Plaintiffs' Liaison Counsel submitted a proposed stipulation dismissing these 26 Plaintiffs, which suggests the dismissals are voluntary, that is, specifically requested by each such Plaintiff. It seems that this is not the case. Liaison Counsel's stipulation and proposed order of dismissal is rejected, and is being returned.

SO ORDERED.

Dated: June 24, 2011
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge

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SCHEDULE A

#	Last Name	First Name	Derivative Last Name	Derivative First Name	Case#
1	Bagiokos	Sarantos	Bagiokos	Patricia	06cv07938
2	Boccanfuso	Bryan	Boccanfuso	Christine	06cv12848
3	Brennan	Robert	Brennan	Joyce	07CV10227
4	Campbell	Wayne	Campbell	Maureen	07CV09002
5	Carter	Lynette	Fetuga	Abayoni	06cv07286
6	Cuevas	Jaime	Cuevas	Daphne	06cv08589
7	Dziubela	Richard	Dziubela	Carolann	06cv08595
8	Gelpi	Manuel	Gelpi	Carmen	07CV09210
9	Godwin	Eugene	Godwin	Andrea	06CV10659
10	Hartfield	Glenn	Hartfield	Roxanne	06cv08004
11	Hourihan	Daniel	Hourihan	Annette	07CV04236
12	Johnson	Charles	Johnson	Ritay	06cv14752
13	Lee	Ryan	Lee	Kalena	06cv09300
14	Lynam	James	Lynam	Athena	06cv11865
15	Maguire	Peter	Maguire	Lisa	07CV05137
16	Markey	Shane	Markey	Sheri	06cv08911
17	McNamara	Robert	McNamara	Lisa	06cv14863
18	Musarella	Mark	Musarella	Kathy	06cv12657
19	Napolitano	John	Napolitano	Marie	06cv10145
20	O'Shaughnessy	Patrick	O'Shaughnessy	Christa	06cv09811
21	Pellegrino	Joseph	Pellegrino	Gina	06cv08656
22	Peralta	Rafael	Peralta	Yolanda	06cv14957
23	Reilly	Keith	Reilly	Ileana	07CV10036
24	Sielaw	Robert	Chiauppa	Maria	06cv02886
25	Trincone	Mark	Trincone	Clare	06cv08979
26	Vazquez	Felix	Vazquez	Milagros	06cv10159